Supreme Court, U.S.
FILED
DEC - 9 2000
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No. 00 87

IN THE

UNITED STATES SUPREME COURT

October Term 2000

BRENT JACKSON,

Petitioner,

v.

BRIAN COHEN, MIKE TOLEDO, JAMES ANTHONY, GLENDALE POLICE DEPARTMENT, JOHN DOES 1-10, JANE ROES 1-20, inclusive,

Respondents.

On Petition For A Writ of Certiorari
To The California Second Appellate District
Court of Appeal

Brief for Respondents

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QUESTIONS PRESENTED

1. Whether an arrestee has standing to assert a Monell challenge to a police department policy of conducting a pre-transport search and a subsequent inventory search as unconstitutional when the arrestee asserting the challenge was only searched once?

2. Whether a misdemeanor arrestee has a constitutional right to be released in the field without being booked or searched?

3. Whether a trial judge is prohibited from relying upon, in addition to other factors, an arrestee's sudden refusal to communicate in determining probable cause?

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I. STATEMENT OF FACTS

On December 10, 1994, at approximately 10:30 p.m., plaintiff was arrested for violation of California Penal Code section 273a(b), misdemeanor child neglect, after plaintiff had left his two minor children, ages six and seven, unattended at Sears for approximately two hours at night and past store closing. Upon his arrest, an inventory search was conducted of the plaintiff and in excess of $11,000.00 in cash was removed from plaintiff's clothing, some of which was believed by the defendant officers to be counterfeit. Consequently, in addition to being booked for child endangerment, plaintiff was booked for violation of California Penal Code section 473, possession of forged bank notes/counterfeit currency, a felony. The currency was ultimately determined to be genuine and no charges were filed with respect to the currency. The child neglect charge was dismissed in due course upon plaintiff's completion of a diversion program.

II. STATEMENT OF THE CASE

Plaintiff initiated the present litigation, asserting causes of action for false arrest and imprisonment, unlawful search and seizure, conversion, and assault and battery, on January 3, 1996. The complaint was amended in January of 1997 to add a cause of action for violation of plaintiff's civil rights. Following a defense award at arbitration, plaintiff sought a trial de novo, which commenced on March 8, 1999. The case was tried to its conclusion in a court trial before The Hon. Florence-Marie Cooper, resulting in judgment in favor of defendants.

Plaintiff thereafter appealed the judgment to the Second Appellate District of the California Court of Appeal, which affirmed the judgment. Plaintiff's petition for rehearing was denied.

Plaintiff thereafter petitioned the California Supreme Court for review, which petition was summarily denied.

Plaintiff now seeks review by way of writ of certiorari to this honorable Court.

III. ARGUMENT

A. The Present Petition For Writ of Certiorari Should Be Denied For Lack of Jurisdiction.

Section 1257 of Title 28 of the United States Code provides as follows:

> a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. §1257.

Rule 10 of the United States Supreme Court Rules provides as follows:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons.

U.S. Supreme Ct. Rules, Rule 10(a).

The present petition fails to clearly identify what "compelling reasons" exist for review on writ of certiorari. Indeed, the petition merely states that this Court's jurisdiction is invoked because Petitioner asserts that the Fourth, Fifth and Eighth Amendments are implicated. It is left to the Court to search for "compelling reasons" for review. Respondents submit that no such reasons exist inasmuch as the matters complained of are entirely issues of fact-based determination. Accordingly, the present petition for certiorari should be summarily denied.

B. <u>The Present Petition For Writ of Certiorari Should Be Denied Because It Is Without Merit.</u>

1. Petitioner Lacks Standing to Assert the Monell Claim.

Standing is a threshold question because, if the

litigants do not have standing to raise their claim, the court is without authority to consider its merits. Warth v. Seldin, 422 U.S. 490, 498 (1975). Article III of the Constitution provides that, for a party to have standing, the party who invoked the court's authority must show that he personally suffered actual or threatened injury as a result of the illegal conduct of the defendant, that the injury is fairly traceable to the challenged action and is likely to be redressed by a favorable decision. Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979).

In the present case, Petitioner's Monell claim challenges a policy of the Glendale Police Department which allows a police officer to conduct a pre-transportation search of an arrestee in addition to such arrestee's pre-booking inventory search. In the present case, Petitioner was not subjected to two searches. Petitioner only underwent a pre-booking inventory search. Accordingly, to the extent that Petitioner asserts a Monell claim on the basis that the Glendale Police Department policy is unconstitutional because it allows

an arrestee to be searched twice, Petitioner has no standing inasmuch as Petitioner was not searched twice. There is no nexus between the challenged policy and the actual circumstances presented by Petitioner's case.

2. The California State Courts Correctly Ruled In Favor of Respondents On The Monell Claim.

Assuming in arguendo that Petitioner had standing to assert the Monell claim, Respondents submit that the California courts correctly ruled in favor of Respondents.

Petitioner's position is that the Glendale Police Department policy at issue contravenes California Penal Code section 853.6; however, section 853.6 provides numerous reasons for nonrelease of a misdemeanant, including such reasons as the person arrested might continue or resume the offense or that the safety of persons might be endangered. Nowhere in section 853.6 does the statute state that the arrestee maintains the right not to be searched. Clearly, this view is consistent with the court's holding in Higbee v. The City of San Diego,

911 F.2d 377 (9th Cir. 1990), wherein the court stated as follows:

> The state is constitutionally permitted to detain all misdemeanor arrestees for the usual post-arrest procedures....[p]laintiffs had no constitutional right to be released in the field without being booked or posting bail once lawfully arrested.

Id., at 379-380.

The crux of appellant's argument on the issue of bail is that, had he not been subjected to a booking search, because he was released immediately on bail, the "counterfeit" bills would not have been discovered. Petitioner previously based this argument on former California Penal Code, section 1268a, which was repealed in 1985. The four cases now cited in support of Petitioner's argument in this regard are cases which are easily distinguishable, inasmuch as all of the cases involved searches following traffic offenses. In fact, one of the cases cited by Petitioner, Carpio v. Superior Court, 19 Cal. App. 3d 790 (1971), was superseded by

People v. Castaneda, 35 Cal. App. 4th 1222 (1995), in which the court held that a person arrested for a bailable offense can be searched without an opportunity to post bail before being placed in custody.

In view of the foregoing, Respondents submit that the California courts correctly found in favor of Respondents with respect to Petitioner's Monell claim.

3. The California State Courts Correctly Ruled in Favor of Respondents On The Issue of Probable Cause.

After hearing all of the evidence on Petitioner's state causes of action for false arrest/imprisonment, conversion and assault and battery, the trial judge found the following with respect to the probable cause issue:

> The Court: As far as probable cause to arrest for child endangerment is concerned, I have absolutely no problem with the existence of probable cause.
>
> It was after 10:00 before Mr. Jackson got to the station to inquire about his children. It's not only reasonable suspicion that they had been

endangered, but the defendant left them unsupervised, as far as he knew utterly unsupervised, from 9 o'clock until after 10:00 when he got to the station.

I have indicated before that there was an admission by the defendant that he left the children in the care and custody of no person. He thought the store was going to close at 9:00; and if we accept his testimony that he thought they would close at 9:00, that certainly doesn't explain that extended period of time until he finally found them and acknowledged that he had left them unsupervised.

I think the probable cause to arrest for the misdemeanor of child endangerment is very, very strong.

The failure to release and the exercise of the officer's discretion not to release him on that misdemeanor without booking and search, I have already addressed that.

As far as probable cause to arrest on the

possession of forged documents, the suspicion was based on the number of things based on the testimony of the officers.

The amount of money. The fact that the bills have these large stamps on them.

I found Officer Cohen's testimony very believable. He said that he placed the call and he was told the bills were counterfeit.

Mr. Jackson testified that these bills were tested using this special colored pen. Assuming that happened as Mr. Jackson recalls --and it probably did since he has a clear memory of it. The officers don't deny it. They simply don't remember whether that happened or not -- there was testimony that when Mr. Cohen came in, he said that test isn't dispositive because they have very sophisticated methods now of bleaching and printing over government paper.

So there is more to deciding if bills are forged than just seeing if the paper reacts to a litmus test with a particular pen.

Probable cause requires a reasonable suspicion that a crime was committed and the defendant is the person who committed it.

Certainly the testimony, certainly the evidence of the Secret Service agent's statement: Those bills are bogus, creates probable cause.

What you need for the offense of possession of these forged documents is not only possession of them but knowledge of the fact that they are forged; and I think that goes directly to Officer Cohen's testimony that Mr.Jackson refused to answer his questions about it.

This does not imply a Fourth Amendment exercise of a right to remain silent or any Miranda issues. Mr. Jackson had been given his Miranda rights. He waived his Miranda rights and was willingly talking to Officer Toledo up until the time there was announcement that the bills were bogus and there were questions about them.

At that time he stopped talking and sort of

stared directly at the wall and refused to communicate.

If Mr. Jackson had made a decision that although he had waived his Miranda rights, he no longer wished to exercise his rights under Miranda, he wished to exercise his rights under Miranda and the Fourth Amendment, he simply could have said: I don't want to talk to you any more. I've decided I want an attorney, whatever right he wanted to exercise.

But to suddenly become stonily silent when you're being asked: What do you know about these bills in your possession, I think adds to the suspicion that there was knowing possession of forged documents which certainly gives probable cause to arrest for that crime.

RT: pp. 205-209.

The appellate court agreed with the trial court's analyses on probable cause, adding that Petitioner's "denial of the charges does not negate probable cause, and credibility was a matter for the trial court to decide."

R: 6.

Petitioner relies on the recent case of Dickerson v. United States, 2000 U.S. Lexis 4305 (2000) to support the position that the trial judge unlawfully found probable cause on the basis of Petitioner's silence when asked about the "counterfeit" currency. The Petition for Writ of Certiorari misleadingly informs this Court that Petitioner's abrupt silence was the basis for the trial court's determination of probable cause when, in fact, it was only a factor. Indeed, the trial court's determination was also based upon the large sum of money in Petitioner's possession, the stamps on the bills and the testimony of Officer Cohen, whom the court found to be very credible, that a Secret Service agent told him that the bills might be counterfeit.

In view of the foregoing, Respondents submit that the California courts properly ruled in favor of Respondents of the issue of probable cause.

CONCLUSION:

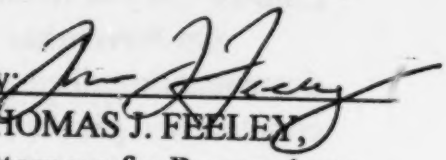
Based upon the foregoing, Respondents

respectfully request that this Honorable Court deny the present Petition for Writ of Certiorari in its entirety.

Dated: 11/06/00

Respectfully Submitted,

THOMAS J. FEELEY, P.C.

By: 

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is 638 Lindero Canyon Road, #433, Agoura, California 91301.

On **November 7, 2000,** I served the foregoing document described as **BRIEF FOR RESPONDENTS** on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

See attached mailing list

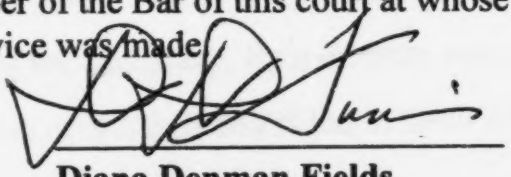
[X] (BY MAIL)

[X] I deposited such envelope in the mail at Agoura, California.

The envelope was mailed with postage thereon fully prepaid.

Executed on **November 7, 2000**, at Agoura, California.

[X] (FEDERAL) I declare that I am employed in the office of a member of the Bar of this court at whose direction the service was made.



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